IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1946 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RATANSHI MULJI CHARITABLE TRUST

Versus

JOINT CHAIRTY COMMISSIONER

Appearance:

1. Special Civil Application No. 1946 of 2001

MR PC KAVINA for Petitioner No. 1

MR HC PATEL, AGP for Respondent No. 1

MR MURALI N DEVNANI for Respondent No. 2

MR RA SEJPAL for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/06/2001

ORAL JUDGEMENT

1. Ratanshi Mulji Charitable Trust through its trustee Shri Mahendrabhai J.Shah, petitioner, has filed this petition under Articles 14 and 226 of the Constitution of India, and has challenged the order dated

25th January, 2001, passed by the Joint Charity Commissioner, Rajkot, wherein the Jt.Charity Commissioner has rejected the offer of Manoj Tea Traders Pvt. Ltd., respondent No.2 herein only on the ground that he has given offer by cheque instead of draft.

2. The facts giving rise to this petition are as under:

2.1 The petitioner is a Trust registered under the provisions of Bombay Public Trusts Act, 1950. The petitioner Trust is having many movable and immovable properties in different places. One such property of the petitioner Trust is situated in Rajkot consisting of land, building, Dharmashala and other built up portions. As the petitioner was finding it difficult to look after and maintain the said property, the petitioner decided to dispose off the same and therefore as required under Sec.36 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as `the Act') the petitioner approached the Joint Charity Commissioner, Rajkot, by filing application No.36/58/99 on 7.12.1999.

2.2 Pursuant to the said application, the Joint Charity Commissioner - respondent No.1 herein on 28th June, 2000, published an advertisement in Jai Hind Daily Newspaper inviting bids for purchase of the property of the petitioner Trust, fixing the upset price at Rs.80.00 lacs (Rupees Eighty Lacs). In response to the said advertisement, in all three bids were received one from respondent No.2, respondent No.3 and one M/s. Sheetal Premises Pvt. Ltd. As M/s. Sheetal Premises Pvt.Ltd. did not remain present at the time of hearing of the application of the petitioner, its bid was not considered. As against the remaining two bids i.e. respondent No.2 and 3 which were opened on 9.9.2000, the bid of the respondent No.2 was found to be the highest bid as he had offered Rs.82,50,000/-. However, instead of attaching a Demand Draft for 10% of the bid amount as per the conditions of the tender advertisement, the second respondent had, due to oversight attached a cheque of 10% bid amount though the second respondent assured to replace the cheque with Demand Draft within 24 hours and requested the respondent No.1 to postpone the hearing by one day which was duly endorsed by the representative of the petitioner Trust who was present at the time of hearing. The respondent No.1 by order dated 25th January, 2001, has rejected the bid of the second respondent only on the ground that the second respondent had not strictly complied with the conditions of the

tender advertisement.

2.3 Thereafter it appears that the respondent No.1 has fixed the next date of hearing of the application preferred by the petitioner, however due to earthquake on 26.1.2001 no further proceedings were initiated.

3. I have heard Mr.P.C.Kavina, learned advocate for the petitioner, Mr.H.C.Patel, learned AGP for the respondent No.1, Mr.Devnani, learned advocate for the respondent No.2 and Mr.R.A.Sejpal, learned advocate for the respondent No.3.

4. Shri P.C.Kavina, learned advocate for the petitioner has tried to assail the aforesaid order of the Joint Charity Commissioner on various grounds. He has stated that in view of sec.36 of the Act, the right of trust to sell the property to whomsoever it wishes. The only function of the Charity Commissioner is to see that the property is not sold away at a rediculously low price. He stated that the offer of the respondent No.2 was at Rs.82,50,000/- whereas the offer of the respondent No.3 was at Rs.81,00,000/- and therefore admittedly offer of respondent No.2 was higher than the offer of respondent No.3. The Jt.Charity Commissioner has rejected the bid of the respondent No.2 only on the technical ground that the offer is given through cheque, however, inspite of the fact that respondent No.2 has indicated that he is prepared to give draft on next date. He further submitted that there was only merely irregularity in submitting the tender with cheque. He submitted that the said irregularity if at all on the part of the bidder, can always be waived as being a technical or minor one. He further submitted that the Jt.Charity Commissioner ought to have seen that respondent No.2 had offered to replace the cheque by Demand Draft within 24 hours. He further submitted that the representative of the petitioner had clearly informed the respondent No.1 that they were keen to accept the highest bid submitted by the respondent No.2 and that the petitioner had no objection if the requisite time was granted to replace the cheque by either Demand Draft or by cash.

5. Shri N.M. Vala respondent No.3 has also filed affidavit in this behalf. However, in view of the subsequent development in the matter, I do not propose to decide the matter on the merits of the case as both the learned Counsels for the respondents No.2 and 3 are prepared to appear before the Joint Charity Commissioner and they are even prepared to have a fresh bid inter se

before the Joint Charity Commissioner. Shri Kavina, learned advocate for the petitioner submitted that if that is so and if trust is likely to get more amount then he has no objection if Joint Charity Commissioner heard the matter only for respondents No.2 and 3 and invite fresh bid amongst them and whatever higher bid and whatever the conditions are accepted by the Jt.Charity Commissioner the same shall be accepted by him also.

6. In view of the aforesaid facts and circumstances of the case, the order dated 25th January, 2001, passed by the Joint Charity Commissioner, Rajkot, is set aside. I, therefore, direct the Joint Charity Commissioner to call the respondent No.2 - Manoj Tea Traders Pvt. Ltd and respondent No.3 N.M.Vala and invite fresh bid inter se in connection with the property of the petitioner trust and allowed them to bid whatever higher amount they offered in the bid. The Joint Charity Commissioner, Rajkot, will pass a short but speaking order in this behalf and decide the same by 14th August, 2001. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

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